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HOUSE BILL 100

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

**RELATING TO CRIMINAL SENTENCING; REQUIRING A CAPITAL FELONY
OFFENDER, A THREE-STRIKES OFFENDER OR A REPEAT VIOLENT SEXUAL
OFFENDER TO REMAIN INCARCERATED FOR THE ENTIRETY OF THE
OFFENDER'S NATURAL LIFE; AMENDING AND REPEALING SECTIONS OF THE
NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 31-18-23 NMSA 1978 (being Laws 1994,
Chapter 24, Section 2, as amended) is amended to read:**

**"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
LIFE IMPRISONMENT [EXCEPTION].--**

**A. When a defendant is convicted of a third violent
felony, and each violent felony conviction is part of a
separate transaction or occurrence, and at least the third
violent felony conviction is in New Mexico, the defendant**

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1 shall, in addition to the sentence imposed for the third
2 violent conviction when that sentence does not result in death,
3 be punished by a sentence of life imprisonment. [~~The life~~
4 ~~imprisonment sentence shall be subject to parole pursuant to~~
5 ~~the provisions of Section 31-21-10 NMSA 1978.~~]

6 B. The sentence of life imprisonment shall be
7 imposed after a sentencing hearing, separate from the trial or
8 guilty plea proceeding resulting in the third violent felony
9 conviction, pursuant to the provisions of Section 31-18-24 NMSA
10 1978.

11 C. For the purpose of this section, a violent
12 felony conviction incurred by a defendant before [~~he~~] the
13 defendant reaches the age of eighteen shall not count as a
14 violent felony conviction.

15 D. When a defendant has a felony conviction from
16 another state, the felony conviction shall be considered a
17 violent felony for the purposes of the Criminal Sentencing Act
18 if that crime would be considered a violent felony in New
19 Mexico.

20 E. As used in the Criminal Sentencing Act:

21 (1) "great bodily harm" means an injury to the
22 person that creates a high probability of death or that causes
23 serious disfigurement or that results in permanent loss or
24 impairment of the function of any member or organ of the body;
25 and

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(2) "violent felony" means:

- (a) murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978;
- (b) shooting at or from a motor vehicle resulting in great bodily harm, as provided in Subsection B of Section 30-3-8 NMSA 1978;
- (c) kidnapping resulting in great bodily harm inflicted upon the victim by his captor, as provided in ~~[Subsection B of]~~ Section 30-4-1 NMSA 1978; ~~[and]~~
- (d) criminal sexual penetration, as provided in Subsection C or Paragraph (5) or (6) of Subsection D of Section 30-9-11 NMSA 1978; and
- (e) robbery while armed with a deadly weapon resulting in great bodily harm as provided in Section 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA 1978. "

Section 2. Section 31-18-25 NMSA 1978 (being Laws 1996, Chapter 79, Section 1, as amended) is amended to read:

"31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS-- MANDATORY LIFE IMPRISONMENT ~~[EXCEPTION]~~..--

A. When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment

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1 imposed for the second violent sexual offense conviction, be
2 punished by a sentence of life imprisonment. [~~The life~~
3 ~~imprisonment sentence shall be subject to parole pursuant to~~
4 ~~the provisions of Section 31-21-10 NMSA 1978.~~

5 ~~B. Notwithstanding the provisions of Subsection A~~
6 ~~of this section, when a defendant is convicted of a second~~
7 ~~violent sexual offense, and each violent sexual offense~~
8 ~~conviction is part of a separate transaction or occurrence, and~~
9 ~~the victim of each violent sexual offense was less than~~
10 ~~thirteen years of age at the time of the offense, and at least~~
11 ~~the second violent sexual offense conviction is in New Mexico,~~
12 ~~the defendant shall be punished by a sentence of life~~
13 ~~imprisonment without the possibility of parole.~~

14 ~~C.]~~ B. The sentence of life imprisonment shall be
15 imposed after a sentencing hearing, separate from the trial or
16 guilty plea proceeding resulting in the second violent sexual
17 offense conviction, pursuant to the provisions of Section
18 31-18-26 NMSA 1978.

19 ~~[D.]~~ C. For the purposes of this section, a violent
20 sexual offense conviction incurred by a defendant before [he]
21 the defendant reaches the age of eighteen shall not count as a
22 violent sexual offense conviction.

23 ~~[E.]~~ D. When a defendant has a felony conviction
24 from another state, the felony conviction shall be considered a
25 violent sexual offense for the purposes of the Criminal

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1 Sentencing Act if the crime would be considered a violent
2 sexual offense in New Mexico.

3 [F-] E. As used in the Criminal Sentencing Act,
4 "violent sexual offense" means:

5 (1) criminal sexual penetration in the first
6 degree, as provided in Subsection C of Section 30-9-11 NMSA
7 1978; or

8 (2) criminal sexual penetration in the second
9 degree, as provided in Subsection D of Section 30-9-11 NMSA
10 1978. "

11 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
12 Chapter 28, Section 1, as amended) is amended to read:

13 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

14 A. An inmate of an institution who was sentenced to
15 life imprisonment as the result of the commission of a capital
16 felony, who was convicted of three violent felonies and
17 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
18 or who was convicted of two violent sexual offenses and
19 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
20 1978 and Section 31-18-26 NMSA 1978 [~~becomes eligible for a~~
21 ~~parole hearing after he has served thirty years of his~~
22 ~~sentence. Before ordering the parole of an inmate sentenced to~~
23 ~~life imprisonment, the board shall:~~

24 (1) ~~interview the inmate at the institution~~
25 ~~where he is committed;~~

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1 ~~required to undergo a minimum period of parole of five years.~~
2 ~~During the period of parole, the person shall be under the~~
3 ~~guidance and supervision of the board] is not eligible for~~
4 ~~parole and shall remain incarcerated for the entirety of the~~
5 ~~inmate's natural life.~~

6 [~~C.~~] B. Except for sex offenders as provided in
7 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
8 first, second or third degree felony and who has served the
9 sentence of imprisonment imposed by the court in an institution
10 designated by the corrections department shall be required to
11 undergo a two-year period of parole. An inmate who was
12 convicted of a fourth degree felony and who has served the
13 sentence of imprisonment imposed by the court in an institution
14 designated by the corrections department shall be required to
15 undergo a one-year period of parole. During the period of
16 parole, the person shall be under the guidance and supervision
17 of the board.

18 [~~D.~~] C. Every person while on parole shall remain
19 in the legal custody of the institution from which he was
20 released, but shall be subject to the orders of the board. The
21 board shall furnish to each inmate as a prerequisite to his
22 release under its supervision a written statement of the
23 conditions of parole that shall be accepted and agreed to by
24 the inmate as evidenced by his signature affixed to a duplicate
25 copy to be retained in the files of the board. The board shall

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1 also require as a prerequisite to release the submission and
2 approval of a parole plan. If an inmate refuses to affix his
3 signature to the written statement of the conditions of his
4 parole or does not have an approved parole plan, he shall not
5 be released and shall remain in the custody of the institution
6 in which he has served his sentence, excepting parole, until
7 such time as the period of parole he was required to serve,
8 less meritorious deductions, if any, expires, at which time he
9 shall be released from that institution without parole, or
10 until such time that he evidences his acceptance and agreement
11 to the conditions of parole as required or receives approval
12 for his parole plan or both. Time served from the date that an
13 inmate refuses to accept and agree to the conditions of parole
14 or fails to receive approval for his parole plan shall reduce
15 the period, if any, to be served under parole at a later date.
16 If the district court has ordered that the inmate make
17 restitution to a victim as provided in Section 31-17-1 NMSA
18 1978, the board shall include restitution as a condition of
19 parole. The board shall also personally apprise the inmate of
20 the conditions of parole and his duties relating thereto.

21 ~~[E.]~~ D. When a person on parole has performed the
22 obligations of his release for the period of parole provided in
23 this section, the board shall make a final order of discharge
24 and issue him a certificate of discharge.

25 ~~[F.]~~ E. Pursuant to the provisions of Section

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1 31-18-15 NMSA 1978, the board shall require the inmate as a
2 condition of parole:

3 (1) to pay the actual costs of his parole
4 services to the adult probation and parole division of the
5 corrections department for deposit to the corrections
6 department intensive supervision fund not exceeding one
7 thousand eight hundred dollars (\$1,800) annually to be paid in
8 monthly installments of not less than twenty-five dollars
9 (\$25.00) and not more than one hundred fifty dollars (\$150), as
10 set by the appropriate district supervisor of the adult
11 probation and parole division, based upon the financial
12 circumstances of the defendant. The defendant's payment of the
13 supervised parole costs shall not be waived unless the board
14 holds an evidentiary hearing and finds that the defendant is
15 unable to pay the costs. If the board waives the defendant's
16 payment of the supervised parole costs and the defendant's
17 financial circumstances subsequently change so that the
18 defendant is able to pay the costs, the appropriate district
19 supervisor of the adult probation and parole division shall
20 advise the board and the board shall hold an evidentiary
21 hearing to determine whether the waiver should be rescinded;
22 and

23 (2) to reimburse a law enforcement agency or
24 local crime stopper program for the amount of any reward paid
25 by the agency or program for information leading to his arrest,

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